

MANKO | GOLD | KATCHER | FOX LLP

AN ENVIRONMENTAL LAW PRACTICE

May 2, 2005

JOSEPH M. MANKO
MARC E. GOLD
BRUCE S. KATCHER*
NEIL S. WITKES*
MICHAEL M. MELOY
ROBERT D. FOX
JILL HYMAN KAPLAN
JONATHAN E. RINDE*
JOHN F. GULLACE*
BART E. CASSIDY*
BRENDA HUSTIS GOTANDA*
JONATHAN H. SPERGEL*
RODD W. BENDER*
CAROL F. MCCABE*
TODD D. KANTORCZYK
NICOLE R. MOSHANG*
MICHAEL C. GROSS*
KATHLEEN B. CAMPBELL*
REBECCA C. BODNER*
BRIDGET L. DOREMAN*

TECHNICAL CONSULTANTS
DARRYL D. BORRELLI
CARA L. FOX

401 CITY AVENUE
SUITE 500
BALA CYNWYD, PA 19004
484 430 5700 TEL
484 430 5711 FAX
WWW.MGKFLAW.COM
WWW.MGKFBROWNFIELDS.COM

CHERRY HILL, NJ
PHILADELPHIA, PA

*ADMITTED IN NJ AND PA

*PARTNER RESPONSIBLE FOR NJ

OTHER ATTORNEYS ADMITTED IN PA ONLY

Via Certified Mail

Return Receipt Requested

Mr. Chuck Schadel (32P31)
U.S. Environmental Protection Agency
Water Protection Division
Office of Compliance and Enforcement
NPDES Branch
1650 Arch Street
Philadelphia, PA 19103

MAY 5 2005

Re: Request for Information Pursuant to Section 308 of the
Clean Water Act Issued to Hovnanian Enterprises, Inc.

Dear Mr. Schadel:

In conformance with our several discussions regarding the scope and phasing of a response to the Request for Information Pursuant to Section 308 of the Clean Water Act (the "Section 308 Request") sent by the U.S. Environmental Protection Agency ("EPA") to Hovnanian Enterprises, Inc., enclosed please find a response to Questions 6 and 7, a certification, and a set of General Qualifications and Objections. This response is submitted on behalf of K. Hovnanian at Upper Uwchlan, LLC for the Byers Station residential subdivision, and K. Hovnanian at Northampton LLC for the Woods at Northampton residential subdivision. As the recipient of the Section 308 Request, Hovnanian Enterprises, Inc. joins in the General Qualifications and Objections.

Please note that one of the Objections raised herein relates to EPA's right, under the guise of the Section 308 Request, to require the sampling and analysis of stormwater discharged from the identified construction sites, when the permits which allow those discharges place no numerical limitations on the discharge water, but rather are based upon the implementation of Best Management Practices ("BMPs"). Notwithstanding the submittal of the enclosed response, Hovnanian Enterprises, Inc., K. Hovnanian at Upper Uwchlan, LLC and K. Hovnanian at Northampton, LLC specifically reserve the right to challenge EPA's authority to require the implementation of any sampling and analysis of the stormwater, and also the right to challenge the production and use of any data which may hereinafter be collected.

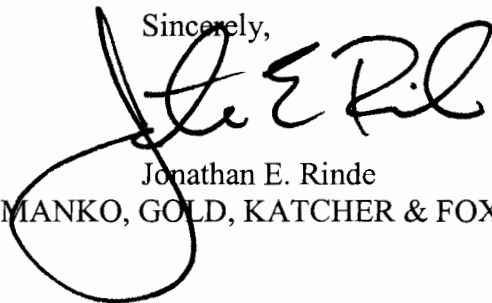


Mr. Chuck Schadel (32P31)
May 2, 2005
Page 2

As you will also note, I have concurrently sent a copy of this letter and the enclosure to Nina Rivera, Esquire of your office.

Please call me if you should have any questions regarding this submission.

Sincerely,

A handwritten signature in black ink, appearing to read "J. E. Rinde". The signature is written in a cursive style with a large, looping initial "J".

Jonathan E. Rinde
For MANKO, GOLD, KATCHER & FOX, LLP

JER/kl

Enclosure

cc: Nina Rivera, Esquire (w/encl.)

General Qualifications and Objections to the Information Requested Pursuant to the Section 308 Request.

a. Hovnanian Enterprises, Inc., K. Hovnanian at Upper Uwchlan, LLC and K. Hovnanian at Northampton, LLC object to the Section 308 Request in that the questions set forth therein are overbroad, unreasonable, seek to obtain information not related to any objective of the Clean Water Act's permitting program, and are beyond the scope of EPA's authority pursuant to Section 308.

b. Section 308 of the Clean Water Act states that EPA has the authority to require owners or operators of point source discharges to establish and maintain records, make reports, install and maintain monitoring equipment, and sample such effluents when "required to carry out" certain objectives of the Clean Water Act. Hovnanian Enterprises, Inc., K. Hovnanian at Upper Uwchlan, LLC and K. Hovnanian at Northampton, LLC understand that the permitting program to control stormwater from construction sites authorized by Clean Water Act is based upon the implementation of "best management practices," and not numeric discharge standards. Further, the actual Clean Water Act permits issued for stormwater discharges from the two construction sites identified in the Section 308 Request do not contain numeric discharge standards for the parameters which EPA requires to be analyzed. Therefore, Hovnanian Enterprises, Inc., K. Hovnanian at Upper Uwchlan, LLC and K. Hovnanian at Northampton, LLC specifically object to the requirement to sample and analyze the discharge of stormwater on the construction sites as identified in the Section 308 Request, and hereby specifically reserve the right to challenge EPA's authority to require the implementation of any sampling and analysis of the stormwater, and also reserve the right to challenge the production and use of any data which may hereinafter be collected.

c. Hovnanian Enterprises, Inc., K. Hovnanian at Upper Uwchlan, LLC and K. Hovnanian at Northampton, LLC object to the Section 308 Request as it purports to require supplements to these responses in the future if, for example, newly developed information becomes known or if these responses, or any portion thereof, becomes false, incomplete or misrepresentative of the facts.

d. Hovnanian Enterprises, Inc., K. Hovnanian at Upper Uwchlan, LLC and K. Hovnanian at Northampton, LLC object to the Section 308 Request in that it seeks to reveal information that is protected from disclosure by the attorney-work product privilege, the privilege associated with attorney-client communications, and/or other applicable privileges.

e. Hovnanian Enterprises, Inc., K. Hovnanian at Upper Uwchlan, LLC and K. Hovnanian at Northampton, LLC object to the Section 308 Request to the extent that it uses terms and phrases that are undefined and can be interpreted in several ways. In each such instance, we have attempted to give the undefined term a common meaning given the context in which the term is used.

f. Some of the stormwater draining into the sedimentation basin whose discharges are proposed to be sampled at the Woods at Northampton residential subdivision

originates from upslope, off-site properties not under the control of Hovnanian Enterprises, Inc. or K. Hovnanian at Northampton, LLC.

g. The Section 308 Request states that “the sampling location must be situated immediately before the discharge reaches any surface water and after the discharge goes through any erosion and sedimentation control or treatment processes.” See Part 2 Question 7.a. of the Section 308 Request. Please note that it is impossible to locate such a sampling location, since at these developments there is a vegetative strip which provides further erosion and sedimentation control following the discharge of the stormwater from the sedimentation basin and rip-rap pad. Therefore, the samples proposed to be taken do not account for the additional sediment control provided by the vegetative strip prior to the discharge entering surface waters.

h. With respect to the Byers Station residential subdivision, please note that this subdivision is a development that is being undertaken in conjunction with several other developers not related to Hovnanian Enterprises, Inc. or K. Hovnanian at Upper Uwchlan, LLC.

i. The sedimentation basins whose discharges are identified for sampling are designed to detain stormwater for extended periods of time, and slowly discharge the stormwater over a period of days, not hours. Therefore, EPA’s requirement that the first six (6) hours of stormwater discharge be sampled may or may not be representative of the discharge.

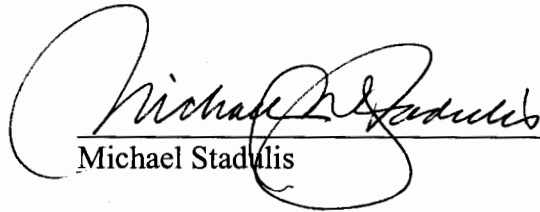
j. EPA has required that the Sampling Plan be implemented, and the data be collected, analyzed and submitted to EPA, within sixty (60) days of receipt of EPA’s written approval of the Sampling Plan. EPA has also required the four (4) sampling events occur during that time period. As noted in the Sampling Plan, compliance with these requirements are weather dependent, and out of the control of Hovnanian Enterprises, Inc., K. Hovnanian at Upper Uwchlan, LLC and K. Hovnanian at Northampton, LLC

k. EPA has required that it be provided 72 hours advance notice when it is anticipated that sampling will be conducted. Sampling is weather dependent, and therefore 72 hours advance notice will be, at best, unreliable. As noted in the Sampling Plan, the sampling devices proposed to be employed are automatically operated, and therefore Hovnanian Enterprises, Inc., K. Hovnanian at Upper Uwchlan, LLC and K. Hovnanian at Northampton, LLC will not have advance notice of a sampling event. Therefore, EPA will not be given 72 hour advance notice of sampling. K. Hovnanian at Upper Uwchlan, LLC and K. Hovnanian at Northampton, LLC will endeavor to have EPA be given advance notice when the samples will be collected from the automatic sampler.

l. Hovnanian Enterprises, Inc., K. Hovnanian at Upper Uwchlan, LLC and K. Hovnanian at Northampton, LLC reserve the right to assert additional objections.

CERTIFICATION

I certify that to the best of my knowledge, the foregoing responses were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses. I certify that, to the best of my knowledge, the foregoing response is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.



Michael Stadulis